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PL100259

TOWN OF INGERSOLL
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Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Leonard Reeves has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law No. 04-4160 of the City of Ingersoll to rezone lands respecting Part Lots 1, 2 & 5, Block 84, Plan 279 from Special Residential Type 3 (R3-14) Zone to Amended Special Residential Type 3 (R3-14) Zone to permit 46 multiple dwelling units and special provisions to recognize front yard, interior side yard and rear yard setbacks
OMB File No. PL100259

APPEARANCES:

Parties

Reeves Realty Corporation

Town of Ingersoll

Counsel

M. L. Coulter

A. R. Patton

Participants

Beverly Martin

Marietta Shain-White

Howard DeJong

Chris Pare

Tammie Kok

Leigh Mahoney

DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD

Leonard Reeves, through his company, Reeves Realty Corporation ("the Appellant") filed an application to rezone his property described as Part Lots 1, 2 and 5 Block 84, Plan 279 ("the subject property") in the Town of Ingersoll ("the Town"). Although the Council for the Town did not make a decision on the rezoning which prompted the appeal to this Board, at the time of the hearing, the Town had addressed

the matter and took the position to oppose the appeal. Both parties were represented by Counsel and called expert witnesses in support of their respective positions. There were also a number of Participants who testified in opposition to the appeal. They were:

- Beverly Martin of 3 Riverview Road, Ingersoll
- Chris Pare of 12 Hillside Road, Ingersoll
- Marietta Shain-White of 154 McKeand Street, Ingersoll
- Howard DeJong of 166 McKeand Street, Ingersoll
- Tammie Kok of 295 Dunn Court Road, Ingersoll
- Leigh Mahoney of 28 Hillside Road, Ingersoll

Each testified to the potential negative impacts they would experience should the rezoning be permitted. The Participants' properties were in the neighbourhood adjacent and in proximity to the subject property. The residents' concerns can be summarized to say they were not against development of the property but were distressed with the increase in the number of units proposed which they believed would only exacerbate issues of traffic, pedestrian and vehicular safety, run-off of stormwater, emergency access, parking and grading. No site plan application had been submitted and as such, details of the development were not available. The residents also believed the units would be marketed to seniors as affordable housing, to which they did not object but became aware that that was not going to be the case. Many outlined their concerns with respect to reduced sightlines because of the existing topography in the area. The proposed main entrance to McKeand Street is along a hill which, according to the residents, would make ingress and egress difficult and particularly so during the winter months.

The Board has reviewed the testimonies of all the witnesses, both expert and lay person, along with all the documentary evidence to determine that the appeal is dismissed and the rezoning for the subject property is not approved. The reasons are set out below.

While Norman Kelly, an expert in traffic impacts, was called by the Appellant to address traffic issues raised by the neighbours, my reasons focus on the planning merits of the proposed rezoning. Because the proposed rezoning fails on its planning merits, I need not make any determinations concerning traffic impacts. In the end, the Board prefers the expert planning testimony of William Pol, called on behalf of the Town over the opinions provided by Douglas Gagel, qualified as an expert Planner for the Appellant. It should be noted that Ron Versteegen, the in-house County of Oxford Planner was also called by the Appellant. Mr. Versteegen appeared under summons as he had authored a report to Town Council recommending approval. Mr. Versteegen provided a thorough review of the planning policies applicable to the subject property and of its context, both geographically and historically. The subject property is designated residential (Schedule I-1 of the County OP Town of Ingersoll Land Use Plan) and low density residential (Schedule I-2 of the County OP Town of Ingersoll Residential Density Plan) and zoned Special Residential Type 3 R3-14 (now R3-13 due to numbering changes). It is surrounded by R1 zoning which permits single family dwellings. The R3 zone is medium density zoning which permits townhouses. Through the use of aerials, Mr. Versteegen described the surrounding lotting pattern which consists of older development along McKeand Street, a local road and newer development (within the last 20 years) along Hillside. It is interesting to note that there is a draft approved plan of subdivision on the subject property dating back to 1988. The plan was for 20 units and at the time, the zoning was R1 for singles. Five lots (lots 2, 3, 18, 19, and 20) were registered as Plan 41M-109 on February 15, 1989 leaving a 15 lot plan.

On or about September 13, 2004, Extra Realty, a previous owner of the subject property, filed a rezoning application to change the R1 to R3-14 to accommodate a greater number of units on the remaining parcel, namely from 15 to 30 lots. That was approved and no lapsing date was included in the conditions. According to Mr. Versteegen, that draft approval still exists. The configuration of the property remains the same. The Appellant's rezoning sought to increase the number of units from 30 to 46 and allow 1 and 2 storey units. Previously only one storey units were permitted. This rezoning was filed in June 2009. It was deemed incomplete and required traffic and stormwater management studies. That was done and the application was

considered complete sometime in August 2009. Because Council failed to make a decision within the timeframe under the *Planning Act*, it was appealed to this Board.

Mr. Versteegen reviewed his planning report in detail which had recommended approval and he outlined all of the policy criteria he assessed in coming to his recommendation. However during his cross-examination, he was candid to state that the current zoning was also consistent with the 2005 Provincial Policy Statement ("PPS"), conformed to the County of Oxford's Official Plan ("County OP") and represented good land use planning. He was forthright to explain that his report did not include those particular opinions because it was crafted to respond to the application. As such, Mr. Versteegen stated that he had no preference for either the current or proposed zoning. Given this circumstance, the Board looked to Mr. Gagel to provide the required planning rationale to favour the rezoning. Unfortunately Mr. Gagel's responses were inadequate. During the process, the Appellant agreed to reduce the number of units sought from 46 to 44. When Mr. Gagel was asked why the proposed rezoning to allow for 44 units was better than the 30 unit plan which had been approved, his response was that at 30 units, "the developer would lose his shirt." During cross-examination, Mr. Gagel admitted that while he had not done any market research nor knew the land cost to his client nor obtained information on financing, carrying costs or profit margins, he believed a developer had a "right to stay in business and make a reasonable return." Like the other Planners who testified, he too was of the opinion that the current zoning on the property was consistent with the PPS and conformed to the County OP; however, where he differed was his opinion that the current zoning did not represent good land use planning because it was not "practical." He stated unequivocally that there is "no use in building something you cannot sell" and the "market is one criterion a responsible Planner must consider." Planning opinions grounded on whether the developer will or will not make a profit are of no help to assess the planning merits of an application. Such responses only serve to seriously undermine the credibility of a witness, who as an expert is expected to provide objective and independent analyses. Because of these answers, the Board places very little weight on Mr. Gagel's testimony and discounts his opinions.

In contrast, William Pol, qualified as an expert in land use planning and called as a witness for the Town testified that before embarking on a new plan of subdivision, the old draft plan should be removed so that it is clear a townhouse development, not single

family dwellings, is contemplated for the site. He explained that to ensure transparency and openness of the process, the surrounding property owners should be provided with certainty.

Mr. Pol opined that problems with the configuration of the site result in inefficiencies with respect to roads and servicing. The site is not neatly square or rectangular but rather has outcroppings of parcels from prior lot registrations and land assembly. The site is irregular in layout. While not fatal, the irregular shape of the site contributes to the shortcomings of the plan in general. That coupled with the differences in grades and elevations, makes the site challenging, resulting in physical limitations.

Mr. Pol identified problems with the proposed locations of the parking and recreational amenity space. Visitor parking is to be located adjacent to Dunn Court Road. There is existing residential which would back onto the visitor parking. The result would be to have a parking area behind the backyards of these houses. Ms. Kok lives on Dunn Court Road and she explained the negative impacts which she and her family would experience should the parking be located behind her property. In the 30-lot plan from 2004 by Extra Realty as identified in Exhibit 4, the bulk of the visitor parking was to be located at the main entrance at McKeand Street. Specifically Exhibit 4 shows 13 spaces at the McKeand entrance with 2 adjacent to the amenity area, 4 at the end of the proposed street from the main entrance, and 6 along the properties adjacent to Hillside, for a total of 25 spaces. Following revisions, Exhibit 9 maintained the 13 spaces at the main entrance but removed the spaces at the end of the street coming from McKeand as well as the spaces adjacent the amenity area and redistributed those to behind Dunn Court and Hillside. A total of 28 spaces for 30 units were proposed. While no site plan application had been filed with the Municipality, Exhibit 8 is a conceptual site plan for the Appellant's proposal and all the visitor parking, 15 spaces for 46 lots, is to be located next to Dunn Court and Hillside. No cogent planning rationale was provided by the Appellant to explain the move from McKeand to Dunn Court or the significant reduction of visitor spaces despite the increase in the number of units. Further Mr. Versteegen indicated under cross-examination that in his assessment of the evaluation criteria required for Backyard Infill development (policy 9.2.4.1.2), along with the All Infill Proposals criteria (policy 9.2.4.1.4), he could not say

whether or not the proposed location for the visitor parking adjacent to Dunn Court and Hillside was really the best area.

The amenity area is tucked away behind existing multi-family residential along McKeand and would be directly visible from the rear yards of units 28 to 30. The amenity area is supposed to be for children. Mr. Pol explained that policy 9.2.7.5 of the Official Plan requires that “[l]arge developments, with more than 20 units, will generally provide recreational areas for both pre-school and school aged children and further, that “[p]lay space for pre-school children will be situated within the development in a fashion whereby surveillance of the play area is possible from a substantial number of units.” As such, he outlined the serious deficiency in meeting this policy requirement and that the intent of the policy to provide a safe, visible area from a substantial number of units, had not been satisfied. Further there were no sidewalks shown on the concept plan. Mr. Pol raised concerns about pedestrian safety, particularly so for small children heading to the amenity area.

Mr. Pol also outlined the challenges associated with the topography in the area. He testified that there were significant slope constraints and with reference to Exhibit 11, described the retaining wall of approximately 1.2 m between the site and abutting properties with a 1.5 m wooden fence on top. Concerns of additional construction and maintenance costs were raised along with the safety issues when the retaining wall is not properly maintained. Mr. Pol identified that Exhibit 11, the Site Servicing and Grading Plan did not identify the stormwater quality and discharge locations. He testified that with fewer units, such locations could have been accommodated on site.

Mr. Pol testified that the increase from 30 to 46 or 44 units was not compatible with the surrounding area and as such, did not meet the requirement of policy 9.2.1 Strategic Approach. That policy establishes the requirement for new housing to be sensitive to the existing physical character of the area. Mr. Pol explained that the number of storeys suggested by the concept site plan and the density of townhomes was not harmonious with the predominantly one-storey single family dwellings located adjacent and nearby the site.

The proposal was also marketed to the Municipality and neighbours as being affordable housing, and had that been the case, that would have been encouraged by

the Town's Official Plan policy on increasing supply of affordable housing. However, although the notion of affordable housing was referenced by the Appellant on a number of occasions, through the evidence at the hearing it became patently obvious that no steps had been taken to realize this objective. Some of the residents in the area were skeptical and suspicious that affordable housing was never really a viable option. In any event, through the evidence presented on behalf of the Appellant, the Board learned that the development will not be categorized as affordable housing.

Because of these significant shortcomings, the Board determines that the proposed rezoning does not represent good and proper planning and is not in the public interest. While Mr. Reeves suggested that should the proposed rezoning not be approved, he will not be able to develop the parcel at the approved 30 units because of financial reasons, those motives are outside of the Board's requirement to assess the planning merits.

THEREFORE THE BOARD ORDERS that the appeal is dismissed.

This is the Board's Order.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR

